



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Precon Construction Company

File: B-255294.1; B-255294.2

Date: April 6, 1994

Terrance Murphy, Esq. and C. Vance Beck, Esq., Kaufman & Canoles for the protester.
Daniel R. Weckstein, Esq. and William M. Dozier, Esq., Vandeventer, Black, Meredith & Martin, for Woodington Corporation, an interested party.
Billie Spencer, Esq. and Diane D. Hayden, Esq., Department of the Navy, for the agency.
James W. Vickers, Esq. and Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Low bid should be corrected upward following an allegation of mistake where there is clear and convincing evidence that a mistake was made; the intended bid price can be ascertained within a narrow range of certainty; and the bid remains low in any event.

DECISION

Precon Construction Company protests the denial of its request for bid correction and the award of a contract to Woodington Corporation under Solicitation No. N62470-92-B-2142, issued by the Department of the Navy, Norfolk Navy Yard, Portsmouth, Virginia.

The solicitation was for pile wrapping existing timber piles and related work at Pier 13 and Quay 693/694 at the St. Helena Annex. Four bids were read at the bid opening on September 1, 1993. Precon submitted the lowest bid, with a base bid of \$798,825, and \$1,013,555 for the base bid plus additive items. Woodington Corporation submitted the second low bid of \$1,000,000, and \$1,250,000 including the additives. The government estimates were \$974,000 and \$1,242,000, respectively.

As the Precon bid was substantially lower than the government estimate and the next low bid, Precon was requested to verify its bid. On September 15, Precon claimed an error in the bid of \$71,630.07 and requested an

upward adjustment of its base bid to \$870,455.07. Precon also noted that it did not wish to withdraw its bid.

File wrapping consists of placing a flexible plastic membrane encasement around existing timber piles to protect the piles from timber borers and other activity that affect the integrity of piles supporting the pier and the quay. In the instant solicitation, one of the requirements was to remove the longitudinal bracing, 4" x 12" timber that runs the length of the pier between the piles, to allow for the installation of the wrap, and to replace the bracing with new 4" x 12" timber.

Precon's alleged error was the omission from the base bid total of the cost to perform this removal and replacement: \$31,633.35 in labor costs, \$2,916 in equipment, \$29,919.94 in materials, and markup. Precon submitted its worksheets for the project, including the worksheet for the longitudinal bracing showing \$71,630.07 that it allegedly had failed to carry over from the worksheet to the summary or final bid sheet. Precon also submitted affidavits from its estimator and project manager as to how the error occurred.

The Navy denied Precon's request for correction because the agency determined the evidence was not clear and convincing evidence as to the intended bid price. The Navy, however, decided that Precon should be permitted to withdraw the bid because the evidence did show a mistake.

Generally, under Federal Acquisition Regulation (FAR) § 14.406-3(a), a procuring agency may permit a low bidder to correct a mistake in its bid prior to contract award where the bidder submits clear and convincing evidence that a mistake was made, the manner in which the mistake occurred, and the intended bid. Whether the evidence meets the clear and convincing standard is a question of fact, and we will not question an agency's decision unless it lacks a reasonable basis. U.S. General, Inc., B-245452, Jan. 2, 1992, 92-1 CPD ¶ 8. For upward correction of a low bid, worksheets may constitute clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. Id.

The Navy found that it was not clear that the amount of timber that Precon alleged had been omitted from the base bid to perform the longitudinal bracing had not already been included in the base bid. In reviewing the worksheets, the Navy calculated that the base bid without correction included 82,336 Board Feet (BF) of 4" x 12" lumber, whereas the government estimate included 80,000 BF of lumber for both the horizontal and longitudinal bracing. The

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government estimate for the longitudinal bracing alone was 12,000 BF. If Precon had omitted 11,520 BF for the longitudinal bracing, that would increase the amount of lumber it required for the project to 23,855 BF (82,335 BF + 11,520 BF).

Precon filed a supplemental protest with our Office alleging that the government estimate was incorrect and should not have been used as a basis to deny its request for correction. Precon contends that the quantity of lumber estimated by the government was understated, and has submitted calculations to support its claim.

In response to Precon's challenge to the government estimate, the Navy did not contest Precon's calculations, but instead responded that a government estimate is of limited value in a firm, fixed-price procurement. The Navy noted that there is no requirement that a bidder's quantities be consistent with those in the government estimate because a bidder can intentionally overbid or underbid.

However, the Navy's use of its estimate was the major reason it denied Precon's request for correction. Since Precon has reasonably challenged the quantities in the estimate; the Navy concedes that estimates of this sort should not be dispositive in determining a bidder's intent; and the Navy did not respond to the merits of Precon's calculations, we find that reliance solely on the government estimate to deny Precon's request for correction was unreasonable.

The Navy and the awardee, Woodington, maintain that there also are inconsistencies between the longitudinal bracing worksheet and the other worksheets that Precon used to compile its bid. The Navy and Woodington argue that these inconsistencies should preclude correction. We disagree.

At the bottom of the worksheet for the omitted longitudinal bracing, Precon added in its profit and its bond cost, as percentages of the totals. On the worksheets for the other portions of the work to be performed under the contract, except for the additives, the markup and bond cost were not added until the figures were moved to the summary or final bid sheet. The only other worksheets that have the markup and bond costs at the bottom of the individual sheets are Additives 1 and 2. Additive 1 was to extend the wrap 4 feet deeper on the piles, and Additive 2 was to extend the wrap to 1 foot below the mud line.

Precon explains that it treated the longitudinal bracing as a separate and distinct unit of work, like the two additives. Precon notes that the installation of the

bracing will affect river traffic because the bracing (20 foot lengths of timber) must be inserted at the end of the pier from the navigable waters of the Elizabeth River and, therefore, the installation must be coordinated with the Coast Guard. The existing longitudinal bracing is minimal and need not be reinstalled at the same time the more extensive horizontal bracing and diagonal crossbracing is installed after the piles are wrapped. Precon argues that it therefore computed its price for the longitudinal bracing as a separate and stand-alone item in the same manner in which it priced the additives.

Our review of the drawings contained in the solicitation shows that the longitudinal bracing is minimal compared to the horizontal and crossbracing requirements, and might well be installed at a different time. We find Precon's explanation of why it priced the longitudinal bracing in the manner in which it did, and of the related difference with regard to profit and bond cost worksheet entries, to be reasonable. In sum, we do not think that this issue warrants discounting the longitudinal worksheet for purposes of the mistake claim.

The Navy has pointed to several other inconsistencies between the prices included on the longitudinal bracing worksheet and the other worksheets submitted, such as differing hourly rates for divers and fuel costs.

Regarding the divers, Precon listed \$33.08 per hour for Additive 1, \$24.48 per hour for timber replacement, and \$27.86 per hour for the longitudinal bracing (on the omitted worksheet). Precon maintains that it used different hourly rates based on the amount of time a diver would be in the water for that portion of the work, because that is the time the diver is paid at a higher rate. This is a reasonable explanation of the difference, in our view.

Similarly, the daily fuel costs listed are \$10 in the equipment schedule, \$5 in Additive 1, and \$10 for the longitudinal bracing. Precon states that it bid lower on Additive 1 because the boats and equipment would already be on site for that work.

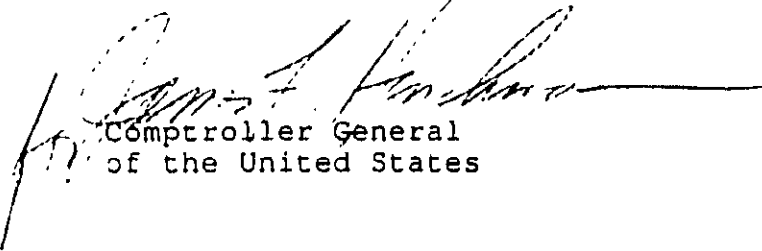
In addition, Precon incorrectly extended its price for Compressor/Hammers in the equipment list; the figure should be \$9,600 rather than \$8,000. Precon has not requested correction of this error, however.

We have held that where a bidder has not requested correction for other matters an agency suggests may be in error, we will not consider these alleged discrepancies if they are not part of the work affected by the error actually

claimed. McInnis Brothers Construction, Inc., B-251138, March 1, 1993, 93-1 CPD ¶ 186. In any event, correction may be allowed, even where the intended bid price cannot be determined exactly, provided there is clear and convincing evidence that the amount of the intended bid would fall within a narrow range of uncertainty and would remain low after correction. Id. Here, even accepting the view that there were errors on all these items, and correcting them, Precon would remain the low bidder after correction by more than \$80,000, or 8 percent.

Accordingly, we find that Precon's base bid, which is low with or without correction, should be corrected to \$870,455.07 and award made to Precon, if otherwise proper. Further, Precon is entitled to recover its reasonable costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(f)(1), § 21.6(d)(1).

The protest is sustained.



Robert F. Anderson
Comptroller General
of the United States